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No. A-862

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

PAUL ALLEN COOPER,

Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

On Appeal From
California Court of Appeal
Second Appellate District

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Was the appellant (defendant below) denied due process of law in violation of the Fourteenth Amendment of the United States Constitution by the following:

A. The alleged penal statute (P.C. 470) which the appellant was accused of violating is not a criminal statute at all in that:

(1) It is vague and ambiguous;

(2) It does not comply with the State of California definition of a crime contained in Penal Code § 15 in that:

(a) No conduct is either forbidden or prohibited in Penal Code § 470 and there is no penalty contained in said statute.

B. The trial court refused to comply with the law of the State of California and the United States in that it:

(1) Refused to conduct a hearing as required by Penal Code 1538.5 when it summarily denied defendant's motion to suppress evidence, which also denied appellant's rights under the Fourth Amendment, United States Constitution.

(2) Permitted the trial district attorney to amend the criminal complaint over the objections of the defendant and after the jury had been sworn in but refused the defendant's request for a five-day continuance as required by California law and the due process provision of the Fourteenth Amendment, U.S. Constitution.

(3) Refused to grant appellant (defendant) a hearing on his motion for a new trial after several members of the jury had advised that in their deliberation of the case they never considered whether the document (employment contract) which the district attorney claimed was forged actually was forgery.

(4) Denied appellant's (defendant) motion for a new trial summarily without the opportunity to present any evidence.

(5) Improperly gave appellant a greater sentence than appellant was offered in another court for a plea of "nolo contendere" and refused to set a hearing on the matter, therefore violating his rights. The appellant was sentenced to a greater sentence because

he insisted upon not waiving the rights guaranteed to him by the United States and California Constitutions, to wit:

a) presumption of innocence;

b) confrontation of witnesses.

(6) Denied appellant's motion to disqualify the District Attorney from prosecuting the criminal case against him and requesting that the matter be transferred for prosecution to the Attorney General of California on the grounds that the District Attorney and the attorneys for the complaining witness had formed a conspiracy to violate appellant's due process rights.

LIST OF PARTIES

The caption of the case contains the names of all the parties to the proceeding in the Court whose judgment is sought to be reviewed.

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vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Appellee,

APPEAL FROM CALIFORNIA STATE COURT

JURISDICTIONAL STATEMENT

OPINIONS AND JUDGMENTS BELOW

Attached hereto and made a part hereof and incorporated herein, marked Appendix "A" for reference is Opinion of the Court of Appeal of the State of California, Second Appellate District,

Division Five, filed Nov. 10, 1981.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) The appeal is from the ruling of the California Supreme Court summarily denying a hearing to appellant after the Court of Appeal of the State of California, Second Appellate District, Division Five, ruled against appellant.

(ii) a) The date of entry of judgment sought to be reviewed - December 10, 1980.

b) The date of any order respecting a hearing - January 13, 1982.

c) The date the notice of appeal was filed - February 10, 1982.

d) The court in which it was filed - Court of Appeal of the State of California, Second Appellate District.

(iii) Statutory provision believed to confer jurisdiction of the appeal on this court:

28 USC 1257(2); Supreme Court Rule 10(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution which states in relevant part:

> (N)or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Constitution, Article I, Section 13, states in relevant part:

> No person shall be . . . deprived of life, liberty, or property without due process of law.

STATUTES

The Sovereign People of the State of California imposed upon itself a determination as to what procedure would constitute "due process of law" by declaring in Section 949 of the California Penal Code that:

> The first pleading on the part of the people in the superior court is the ... information

and followed said provision with Section 950 of said Code, which states in relevant part:

> The accusatory pleading must contain: * * *
>
> 2. A statement of the public offense ... charged therein.

California Penal Code, Section 15 states in relevant part:

> A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death;

2. Imprisonment;

3. Fine;

California Penal Code, Section 1538.5, states in relevant part:

> (a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:
>
> (1) The search or seizure without a warrant was unreasonable.

California Penal Code, Section 470 states:

> Every person who, with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he has no authority so to do, to, or falsely makes, alters, forges, or counterfeits, any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, bond, covenant, bank bill or note, post note, check, draft, bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, trading stamp, power of attorney, or any certificate of any share, right, or interest in the stock

of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release, or receipt for money or goods, or any acquittance, release or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft, order, or any assignment of any bond, writing obligatory, promissory note, or other contract for money or other property; or counterfeits or forges the seal or handwriting of another; or utters, publishes, passes, or attempts to pass, as true and genuine, any of the above-named false, altered, forged, or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged, or counterfeited, with intent to prejudice,

damage, or defraud any person; or who, with intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

California Penal Code, Section 686, states in relevant part:

In a criminal action the defendant is entitled:

1. To a speedy and public trial.

2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.

California Penal Code, Section 1049, states:

After his plea, the defendant is entitled to at least five days to prepare for trial.

STATEMENT OF THE CASE

This appeal arises from a state court action in which appellant was

found guilty of forgery (California Penal Code S 470) by a jury trial on November 10, 1980. Appellant was placed on probation for three years on the condition, among others, that he spend 60 days in county jail.

Appellant filed a Notice of Appeal on December 10, 1980 with the Court of Appeal of the State of California, Second Appellate District.

In appellant's brief the following issues were raised:

A. The alleged penal statute (P.C. 470) which the appellant was accused of violating is not a criminal statute at all in that:

(1) It is vague and ambiguous;

(2) It does not comply with the State of California definition of a crime contained in Penal Code

§ 15.

(3) No conduct is either forbidden or prohibited in Penal Code § 470 and there is no penalty contained in said statute.

B. The trial court refused to comply with the law of the State of California and the United States in that it:

(1) Refused to conduct a hearing as required by Penal Code 1538.5 when it summarily denied defendant's motion to suppress evidence, which also denied appellant's rights under the Fourth Amendment, U.S. Constitution.

(2) Permitted the trial district attorney to amend the criminal complaint over the objections of the defendant and after the jury had been

sworn in but refused the defendant's request for a five day continuance as required by California law and the due process provision of the Fourteenth Amendment, U.S. Constitution.

(3) Refused to grant appellant (defendant) a hearing on his motion for a new trial after several members of the jury had advised that in their deliberation of the case they never considered whether the document (employment contract) which the district attorney claimed was forged actually was forgery.

(4) Denied appellant's (defendant) motion for a new trial summarily without the opportunity to present any evidence.

(5) Improperly gave appellant a greater sentence than appellant was

offered in another court for a plea of "nolo contendere" and refused to hear the matter.

(6) Denied appellant's motion to disqualify the district attorney from prosecuting the criminal case against him and requesting that the matter be transferred for prosecution to the Attorney General of California on the grounds that the district attorney and the attorneys for the complaining witness had formed a conspiracy to violate appellant's due process rights.

All of the foregoing matters were first raised in the trial court - then in the Court of Appeal and then in the Supreme Court (all of California).

They were raised in the trial court by appropriate motions which were

denied.

They were again raised in the Court of Appeal and the Supreme Court of California and denied in said Courts.

CONCISE STATEMENT OF THE FACTS

This case was originally filed against appellant on November 4, 1975 and went to preliminary hearing on April 23, 27, 28, and 29, 1976. Thereafter, appellant was arraigned and pled "not guilty."

His attorney then filed a motion under California Penal Code Section 995 which in legal effect was a motion to set aside the information due to the fact that:

1. That before the filing thereof the defendant had not been legally committed by a magistrate.

2. That the defendant had been committed without reasonable or probable cause.

The Superior Court granted the motion and dismissed the case against the defendant and the People appealed from the dismissal. The Court of Appeal reversed the decision of the Superior Court and reinstated the information (complaint).

The case was then set up for trial and the defense made several motions on different occasions, to wit:

1. To dismiss the information.

2. To suppress the evidence.

3. To disqualify the district attorney from prosecuting the case.

Each of the foregoing motions were denied summarily without a hearing as required by California law.

After each ruling, a petition for a writ of prohibition was filed with the Court of Appeal and summarily

denied without a hearing. The same took place in the California Supreme Court.

After the trial was begun and a jury impaneled, the District Attorney made a motion to amend the information. The motion was granted and the defendant was required to plead to the amended information to which he pled "not guilty." The defendant requested a continuance of five days to prepare for the defense to the amended information as required by law (Penal Code 1049) but was denied said continuance.

At defendant's trial, no evidence was introduced to establish that the defendant had forged the alleged document in question (employment contract).

After the guilty verdict by the jury, several of the jurors told defendant

that he was found guilty because his attorney had not subpoenaed the person whose signature was on the document (which was supposed to be forged) and established that it really was his true signature.

Also several jurors told the District Attorney and defendant's attorney that in deciding the case they never even considered whether or not the signature on the employment contract was forged.

They decided that no person in his right mind would sign a contract with those terms in it.

All of these matters were brought to the attention of the trial (Superior) court and a motion for a new trial was made. Defendant requested a hearing at which time he would subpoena the jury and question them under oath.

This was denied and the defendant was sentanced.

An appeal was filed which was denied by the Court of Appeal and then the Supreme Court of California.

An appeal was then filed with the United States Supreme Court.

STATEMENT OF REASONS WHY THE QUESTIONS PRESENTED ARE SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION

If this case were actually a movie it could very readily be entitled "The Comedy of Errors" or "Un-due Process under the Constitution." It would be one of the greatest comedies ever written -- except that it is not funny to the defendant.

Just about every ruling or decision made by the trial court (Superior Court) or the District Court of Appeal or the

Supreme Court of California in this case is in clear violation of the defendant's due process rights under the Constitution — California and Federal. Further, all rulings and decisions were against the established law in the United States and the State of California — even when the trial court originally ruled in favor of defendant, they did it on the wrong theory and wrong law.

The Courts in California kept on committing these flagrant errors, up to and including the filing of this appeal, as well as the sentencing and committing to custody of the defendant.

It is about time that the Supreme Court of the United States establish what due process means in California and takes this opportunity to point

out how the California Courts have a 100% average for errors of law in this case.

Respectfully submitted,

JOHN N. FROLICH

Counsel for Appellant

DATED: May 11, 1982.